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Dear Craig,

## **Review of the Strata Titles Act 1998 – Discussion Paper**

Thank you for this opportunity of providing further input into this review.

We are a medium size strata management company serving strata corporations in Hobart and surrounds. We employ two Strata Managers accredited by Strata Community Australia (SCA), and three administrative staff.

We arrange and minute approximately 100 strata meetings per annum and our submission is based on our practical experience of the existing Act, which we find to be quite good. We feel that making the Act more prescriptive can create more issues than it solves, however improvements are possible. We generally feel that the Tasmanian legal system has not kept up with the pace of life in an electronic age.

**Strata Plans** - It would be desirable to see more consistency in surveyor's boundary descriptions applied to Strata Plans. A boundary description for a free standing villa to provide that external walls and rooves are an owners responsibility to maintain is practical. However in a multi level strata a Lot boundary to the outside of external walls, which makes the wall a private responsibility is inconsistent with the maintenance and painting requirements of multi level strata buildings where owners work cooperatively through a body corporate to collect funds to reasonably maintain/paint external wall surfaces under one contract with one supplier. In a multi level strat high rise a Lot boundary description to the centre or outside of balcony walls defines balconies as private property and an owner's responsibility to maintain. Although this description makes an external wall leading to the deck private, (not desirable) it is desirable they be private as they are difficult to access, usually over private property and they are expensive, messy and noisy to re waterproof.

**Size of Strata Schemes** -There is some scope for small strata schemes with no common property to be treated differently under a new Act, however once common property is involved there is no obvious alternative to a strata insurance policy which covers public liability on the common property. Instituting different regimes for different sized schemes may have some benefits, however will add to consumer and estate agent confusion.

**Units of Entitlement** -Our experience is that these are most fairly based on the original asking price of lots, divide by 1000. Floor area and other calculations are confusing and misunderstood. Where a dispute exists in relation to an established plan most recent Government valuations are a fair benchmark to use. Special unit entitlements can be misunderstood and overcomplicate something which is best understood when kept simple. In general strata schemes are micro businesses and they do not deserve undue complexity or over complication.

**Common property** -Our view is this should be maintained. We have not experienced difficulty with definitions of the service infrastructure, however if this can be improved to be better understood this would be a good thing.

**Meetings** - Most communication now occurs via email and the nomination of proxies by email. The model by-laws would benefit from a change to permit the electronic transmission of information to owners, including meeting notices, agendas, minutes, levy notices, breach notices and electronic voting on issues arising. Members should be able to attend meetings in person, by proxy or by phone, conference call or zoom.

It is undemocratic that one member of a body corporate can frustrate a particular matter which currently requires unanimous approval but which is broadly supported by a majority of members. For example, an elderly resident may never support the sale of a strata building to a developer when the practical reality is that buildings need renewal from time to time.

The real estate industry and legal profession could do much more to inform purchasers of the rights, and individual and community obligations arising out of purchasing into a strata scheme. One option would be a requirement for a section 83(5) certificate to be attached to a contract of sale of a strata property at the time of execution. The current system of providing this certificate together with pages of often dubious requisitions being answered at settlement is of questionable value and it occurs too late in the sale process to be of real benefit to inform purchasers.

**Quorum-** Our view is a quorum is best described as being representation in person, by proxy, by phone, by skype, zoom or conference call by a majority of the members of the strata. It should be clarified that multiple Lot owners count as one, an owner of multiple lots count as the number of lots owned in a quorum calculation or vote counting.

It is impractical for a meeting to be delayed by a week if a quorum is not present at the appointed time and date of the meeting. The attendance in a week's time will be less, making the process less democratic.

In the event a quorum is not achieved for a particular meeting, the meeting shall proceed with those present and the minutes including resolutions of the meeting not ratified until 14 days after the distribution of minutes to members and then only if members do not respond within the 14 day period in such numbers to out-vote the resolutions of the meeting.

**Body Corporate records** - Members of a strata should reasonably be able to access the records of the strata. These should not include the names, addresses and contact details of other members – The Privacy Act also has provisions. This should include financial statements at year end and supporting documentation, insurance certificate and policy, strata plan, by laws, exclusive use agreements and correspondence.

Where plans are managed, managers, accountants or auditors produce a set of year end financials which are distributed to all members in advance of an AGM. This is the best time for owners to raise any queries they may have as supporting information is current and not yet archived.

In the office of a professional manager, invoices and levy notices are increasingly kept in electronic format within the managers accounting software. As such access is possible from a desktop, logged on to the accounting system, which usually requires the assistance and time of office staff.

Transparency and accurate reporting of the financial affairs of a strata are important aspects of a managers work. Requests for access to information, particularly ongoing and persistent ones should be funded on a time / cost recovery basis. Some members of a strata use process and requests for information, usually for political purposes, to frustrate the efficient operation of a strata including the managers work and the efficient book keeping of what is essentially a micro business.

**Insurance** – Provisions should be consistent with strata insurance policies available in the market place. Some companies' willingness to offer building insurances to individual Lot owners in a strata scheme undermines the desired outcome of the Act which requires a strata corporation to arrange an insurance policy on buildings for their replacement value and public liability on the common property.

If lots in a strata are individually insured it is at best unclear, but highly likely that public liability insurance, as required under the Act, does not cover liability on the common property. In circumstances where a body corporate is not a party to a private insurance policy, how can that body corporate's interest or liability in the common property be insured?

It is unlikely this will be known with any certainty until a major claim arises out of an event on the common property, by which time it will be too late for someone killed or injured on the common property and it could be an expensive exercise for members of the body corporate.

Taking out a strata insurance policy for all buildings in the strata and including liability on the common property is the single most effective way of insuring a strata and it is the single most effective way of unifying members of a strata to come together and act collectively in the beneficial interests of all.

Unifying members should be a goal of the Act, not providing members with uncertain, incomplete options which can only serve to divide members and facilitate their acting unilaterally.

**Dispute Resolution** – In our experience the LTO deals with this matter adequately however is this a role for the LTO or should RMPAT be the forum for dispute resolution? If this were to occur what would be the LTO role in providing information to owners?

**Strata Managers** – Our opinion is the LTO could make better use of SCA members (accredited strata managers) to provide information to owners and to guide strata schemes through disputes. Tasmanian managers have a goal of seeing more unmanaged schemes, engage professional management to achieve a higher level of compliance with the Act, its insurance, meeting and maintenance obligations.

Our view is that it should be mandatory for strata managers to be members the strata industry peak body, Strata Community Australia, an industry peak body which provides;

- Educational pathways for staff working in strata,
- A code of conduct for managers
- The issue of post nominals to suitably educated and qualified strata managers
- Mandatory professional indemnity insurance provision by managers.
- A history of cancelling the membership of managers where breaches of the code of conduct, dishonesty or misconduct have occurred.

A danger of Government entering into licencing or regulation is that a regulatory body has to act on complaints received, which is not straightforward. How does one adjudicate an individual complaint against a manager who may be producing perfectly good results for many hundreds of strata members.

Some members cannot differentiate between the decision making process of members in a strata and the implementation of those decisions, sometimes blaming a manager for the decisions of their strata, whereas a managers role is to implement the decisions of a strata.

**Keeping of Animals** – Best managed by a by Law which states that members must not keep a pet after a notice form the Body Corporate not to do so. The nuisance provisions also apply.

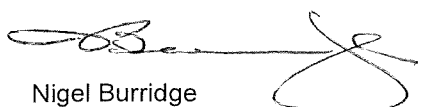
**Maintenance Schedules** – If mandatory this will cause problems for some. For reasonable practical purposes a strata should operate an annual budget of approximately .5% of the building sum insured.

**Compliance and Enforcement** – In our opinion the present Act not overly prescriptive and is fit for purpose. The main shortcoming at present is that the Act is unenforced. Certainly, improvements can be made, however an Act which is more prescriptive will likely be less well understood and how will it be enforced? It could be as simple as requiring that all strata corporations file an annual declaration electronically with the LTO that the strata and common property are insured for replacement value under a strata policy and that the members have met in the last year. This simple act would provide a list of non responsive strata corporations to begin being advised and educating as to members legal responsibilities and obligations.

The LTO does its best with limited resources to inform and educate strata members. Industry feels the LTO could make better use of accredited managers to resolve disputes and encourage plans towards professional management. Allowing the marketing of individual Lot strata insurance policies to strata members which do not insure public liability on the common property will, at some stage cause financial distress to members of a strata in Tasmania. If its worth being included in an Act it should be enforced.

Accredited strata managers can assist the LTO achieve compliance through educating strata members and working collaboratively with them to achieve the common goals of maintenance, insurance and general compliance with the Act.

Yours sincerely  
**Strata Complete Pty Ltd**



Nigel Burridge  
Certified Strata Community Manager

